HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. : 1019 of 2007.
Reserved on: 27.9.2007
Decided on: 1.10.2007.

Naresh Kumar ..... Petitioner.

Versus

State of H.P. and others .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? Yes.

For the petitioner: V.D. Khidta, Advocate.

For respondents No.1 & 2: Mr.M.S Chandel, Advocate General, with Mr.R.M. Bisht, Deputy Advocate General.

Per V.K. Ahuja, J:

This is a writ petition filed by the petitioner under Articles 226 and 227 of the Constitution of India against the award passed by the Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala camp at Mandi, on 8.6.2007.

Briefly stated the facts of the case are that the petitioner was engaged as Beldar on daily wages by respondents No.1 and 2 w.e.f. 1.1.2001. The petitioner worked without break till 30.6.2003. His services were terminated by respondents No.1 and 2 orally w.e.f. 1.7.2003. The petitioner filed an OA before the H.P. State Administrative Tribunal and during the pendency of the

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Whether reporters of local newspapers may be allowed to see the judgment? Yes.

said application, he was re-engaged by the respondents w.e.f. 4.1.2003. The OA was withdrawn on 13.8.2004. The petitioner was working on re-engagement basis from 4.11.2003 till 17.9.2004. Respondent No.2 again terminated the services of the petitioner w.e.f. 18.9.2004, without complying with the mandatory provisions of the Industrial Disputes Act, 1947. The petitioner submitted a demand notice to respondent No.2 on 18.9.2004 and the case was referred to the Government for sending reference to the Labour Court. A reference was made to the Labour Court and the petitioner filed a claim petition before it on 23.10.2006. After following the procedure, the Labour Court passed the impugned award dated 8.6.2007 dismissing the claim petition filed by the petitioner. Being aggrieved by the said order, the petitioner has filed the present writ petition.

Reply to the writ petition was filed by the respondents.

We have heard the learned counsel for the parties and have gone through the record of the case.

The order passed by the learned Labour Court has been assailed by the petitioner on the ground that the learned Labour Court has come to a wrong conclusion that the petitioner has not completed 240 days in preceding 12 calendar months. It was submitted that the learned Labour Court had come to a conclusion that the petitioner had completed 240 days in preceding 11 months as against 12 months and as such respondents No.1 and 2 were not required to give any notice under Section 25 (F) of the Industrial Disputes Act. It was submitted that the interpretation made by the learned Labour Court regarding completing 240 days is totally without any basis and the said order is liable to be set aside. It was submitted that the learned Labour Court had come to a wrong conclusion that the principle of 'last come first go' has not been violated by

respondents No.1 and 2, whereas the evidence on the record shows that persons junior to the petitioner were retained and the services of the petitioner were terminated without complying with the mandatory provisions of the Industrial Disputes Act, 1947.

It is clear from the pleadings of the parties that the date of termination order of the petitioner was 18.9.2004. The petitioner was required to have worked for 240 days preceding 12 months from 18.9.2004. In reply filed by the respondents, they have pleaded that the petitioner had neither completed 240 days in any calendar year nor in the preceding 12 months. However, a perusal of Annexure R-1 giving the details of the working days of the petitioner shows that the petitioner had worked in the year 2004 itself from 1.1.2004 to 18.9.2004, which comes to 261 days. The employee should have worked for 12 months in a calendar year or 12 months preceding the date of his termination. However, it is no requirement of law that in case a worker completes 240 days preceding the date of his termination in 11 months itself or less that it cannot be said that he will not be entitled to the benefit under Section 25(F) of the Industrial Disputes Act. However, the learned Labour Court in its impugned order had given a strange interpretation to this provision of continuous working of 240 days and that it should be completed in 12 calendar months preceding the disengagement of worker by his employer.

The learned Labour Court has observed as under:

> *"Hence, with the mandate of law being rendition of service for 240 days in the 12 calendar months preceding his disengagement, not more, and not less. Therefore, viewed in the light of the above interpretation to the requirement of the provision of Section 25-F of the Industrial Disputes Act, while laying the rule of the necessity of the employer serving retrenchment notice or payment of retrenchment compensation in lieu of such notice."*

We regret to observe that the learned Labour Court has given a wrong interpretation of counting of the period of 240 days preceding the date of termination and had wrongly observed that it should be completed in 12 months and not less than 12 months. It is true that this period has to be completed in 12 calendar months and not more than that but the use of the word not less than 12 months shows that the learned Labour Court has not considered the provision in its right perspective and had given a wrong interpretation to the rules which findings of the learned Labour Court cannot be sustained.

According to the provisions of Section 25(F), no workman can be retrenched who has been in continuous service for a period of 240 days until the workman has been given one month's notice in writing indicating the reasons for retrenchment or he has to be paid the charges for the period of notice.

In view of the fact that persons junior to the petitioner are still in service, it is directed that the petitioner shall be re-employed and he shall also be entitled to one month wages in lieu of the notice. However, keeping in view the fact that the petitioner has not worked during the period his order of retrenchment was in force, he is entitled to 50% of back wages from the date of retrenchment till today. The petitioner shall be re-employed within a period of 15 days from today. The order passed by the learned Labour Court is accordingly set aside being illegal. The writ petition is allowed accordingly. However, there is no order as to costs.

(Deepak Gupta), J.

(V.K. Ahuja), J.

October 1, 2007. (TILAK)